THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.21067 of 2007

DATED: 22-10-2007.

Between:

Dr. Gonipati Tatabbayi

.. PETITIONER

And

The Union of India, rep. by its Principal Secretary to Department of External Affairs, Parliament Secretariat, New Delhi and another.

.. RESPONDENTS

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.21067 of 2007

ORDER:

This Court ordered notice before admission on 05.10.2007.

2. The writ petition is filed for a Writ of Mandamus declaring the action of the 2nd respondent in not issuing passport and insisting the petitioner to produce an order of Court for correction of date of birth in the passport as illegal, arbitrary and violative of the provisions of the Passports Act, 1967 and also Articles 14 and 21 of the Constitution of India, and consequently to direct the 2nd respondent to issue passport with correct date of birth of the petitioner as applied for.

3. In the affidavit filed in support of the writ petition, it is stated that the Passport Officer at Hyderabad issued the petitioner a passport No.126006 on 19.07.1978, since the petitioner had to go Maldives, and on that passport, he went to Maldives and worked there in the Department of Public Health- Male for Government of Maldives. It is further stated that the petitioner renewed the passport vide passport No.E2079296, dated 14.06.2002, issued by the office of the 2nd respondent. It is also further stated that, in fact, the petitioner's birth was not registered anywhere in the Register of Births and that his correct date of birth is 11.08.1953 and the same was recorded in the School Admission Register at the time of his admission into school and the same was recorded in all his academic records. It is further stated that, however, his date of birth was recorded incorrectly as 01.08.1945 in the passport instead of 11.08.1953, the correct date of birth. It is also further stated that the petitioner was born on 11.08.1953

and that since his birth was not registered, the petitioner applied to the Revenue Divisional Officer at Amalapuram, the competent authority under the provisions of Rule 9 of Andhra Pradesh Registration of Births and Deaths Rules, 1999, who duly enquired into the application and issued proceedings in D.Dis.No.D/3368/2006, dated 13.11.2006, directing registration of the birth of the petitioner as on 11.08.1953 in the relevant Birth Register. Further, it is stated that the petitioner produced a certificate from the school authorities before the Revenue Divisional Officer, who, in turn, enquired into the same and found correct. Accordingly, his birth was registered and Birth Certificate was issued to him on 14.11.2006 by Panchayat Secretary of Tatipaka Gram Panchayat. It is further stated that when the petitioner was working at Maldives, he met with an accident in Indian Ocean on 16.05.2005 and lost his briefcase along with important certificates including the passport. Then, he applied for fresh passport to the 2nd respondent by enclosing necessary documents. The 2nd respondent addressed the petitioner a letter dated 13.06.2007 asking him to come to the office and produce a Court Order for correction of date of birth, since his date of birth was shown differently from that of the lost passport. It is further stated that the petitioner submitted a reply dated 10.07.2007 narrating the facts and enclosing the Date of Birth Certificate and other relevant documents, but, even thereafter, the 2nd respondent did not process his application for issuance of passport. Further, it is stated that when the petitioner asked the 2nd respondent as to why passport was not issued on his application, the 2nd respondent stated that he should produce a Court Order to effect the correction of date of birth in the passport. On that, the petitioner submitted that his case is not one of correction of date of birth, but an incidence of non-registration of date of birth and the same was registered duly, but belatedly, as permissible under law, but the 2nd respondent did not entertain his

request. It is further stated that though the petitioner filed W.P.No.18386 of 2007 for the similar relief, he withdrawn the same at the time of admission, since he could not place the certification of his birth as per school records either in the pleadings or exhibits. Further, it is stated that the action of the 2nd respondent in not issuing passport in spite of his application and submission of necessary documents is illegal, arbitrary and violative of the provisions of the Passports Act, 1967 and also Articles 14 and 21 of the Constitution of India. Under such circumstances, the petitioner approached this Court for the appropriate relief specified supra.

4. This Court, in **Mohd. Nasrullah Khan v. Regional Passport Officer, Hyderabad**[1], at paragraphs 4 to 7, observed as hereunder:

> "In *Ali Imran V. Regional Passport Officer, Secunderabad* (2003 (4) ALT 474 = 2003 (3) ALD 625, I have considered the Circular dated 18.4.2001 issued by the Government of India in the Ministry of External Affairs pursuant to the judgment of the High Court of Judicature at Bombay in Civil Writ Petition No.1072 of 2000. The instructions/clarifications issued in the said Circular read as under:
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> (a) Where an applicant is seeking rectification/correction of a mistake in the entry on date of birth/place of birth in the passport, PIA (passport issuing authority) may after verifying/satisfying himself, affect the correction treating the same as a technical correction. There is no need for a declaratory order in such cases.
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> (b) Where a competent authority issuing a birth certificate or an educational board registering a date of birth along with place of birth as valid were to issue any correction or amendment, PIA may effect the necessary amendment in the passport without insisting on a Court Order. As per the provisions of Section 21 of the General Clauses Act, 1997, a competent authority issuing a certificate could also

make necessary amendments to the same.

(c) Where the initial entry has been made on the basis of a supportive document issued by one competent authority i.e., school/educational authority and the applicant subsequently requests for a change on the basis of a certificate issued by another competent authority i.e., municipal authorities resulting in conflicting sources of valid proof, the PIA should direct the applicant to obtain a civil order from a competent court of jurisdiction, certifying the valid date of birth/place of birth.

In view of the above clarifications, I disposed of the said case observing as under:

Be it noted that under the provisions of the Passports Act, 1967, no power is vested in the Regional Passport Officer to correct entries in the passport. However, pursuant to the judgment of the High Court of Bombay referred to hereinabove, it is now permissible for the Regional Passport Officer to accept applications for rectification/correction. Nonetheless, as per clause (c) above, if an entry had been made on the basis of a supportive document issued by one authority i.e., school or educational authority and subsequently the applicant requests for a change of the entry on the basis of the certificate issued by another authority the passport issuing authority is required to direct the applicant to obtain a proper declaration from the civil Court.

In this case, the petitioner has produced Secondary School Certificate to prove that his correct date of birth is 1-4-1976. Therefore, the claim of the petitioner is well supported and squarely falls in Clause (a) of the Circular dt. 18.4.2001.

Following the Judgment of this Court in *Ali Imran* (referred above), this writ petition is also disposed of directing the respondent to consider the application of the petitioner along with the Secondary School Certificate No.PC/01/0190544/2

PRIVATE, issued by the Secretary, Board of Secondary Education, Andhra Pradesh, Hyderabad, and to pass appropriate orders in the light of the observations made in the above Judgment. There shall be no order as to costs."

5. This Court, again, in **Durgempudi Venkata Raghava v. Passport Officer**, **Ministry of External Affairs**, **Passport Office**, **Hyderabad**[2], at paragraphs 9 to 14, observed as hereunder:

"Placing reliance on the clarification issued on the aforesaid Circular, Writ Petition No.8533 of 2004 was disposed of directing the respondents to consider the representation of the petitioner along with the Secondary School Certificate issued by Secretary, Board of Secondary Education, Andhra Pradesh and pass appropriate orders in the light of the observations made in the said judgment.

It is no doubt true that the present Writ Petition was filed in the year 1997 and the Government under Ministry of External Affairs issued the Circular referred to supra on 18.4.2001. As can be seen from the material available on record, the certificates, which had been produced before this Court, it is clear that it is only a bona *fide* mistake, which had crept in.

Apart from this aspect of the matter, no counter-affidavit had been filed denying the specific averment made in the affidavit filed in support of Writ Petition that along with the application form for passport, the Travel Agent also enclosed copies of S.S.C. certificate, Intermediate certificate and also Degree certificate. Therefore, it is evident that without verifying the date of birth, the respondent authority just took the date of birth as filled up in the application form and issued the passport. Hence, it is needless to say that it is only a bona fide mistake.

The learned Senior Standing Counsel for Central Government, no doubt submitted that in such a situation, if the

passport was issued prior to the said circular it would be proper to give an opportunity to the Writ Petitioner to file fresh application for issuance of passport to the competent authority.

In the light of the facts and circumstances, especially in view of Clause (a) of the Circular, dated 18.4.2001 referred to supra and also in view of the fact that all these copies of documents also had been produced at the time of filing of the application form but a *bona fide* mistake had crept in, the Writ Petition is disposed of with the following directions.

The petitioner shall file fresh application enclosing all the copies of certificates, which are being relied upon by him, before the respondent within a period of one month from today and the respondent is directed to take into consideration of the certificates and after verifying the same, pass appropriate orders in this regard within a period of one month thereafter…"

6. In the light of the Circular and the decisions specified above, this Court is of the considered opinion that the writ petition be disposed of directing the 2nd respondent to receive the application of the petitioner for making correction of date of birth in his passport, in the light of the Circular and also the decisions of this Court referred to supra, and dispose of the same in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

7. The writ petition is accordingly disposed of. No order as to costs.

(**P.S.NARAYANA,J)**

22nd October, 2007.

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[1] 2005 (1) ALT 95

[2] 2005 (1) ALT 751